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must be concluded in good faith. Perhaps the same speaker had been right in arguing that it was premature to mention validity in article 23 since that element was not dealt with until part V of the draft. It might be advisable for the Committee not to vote on amendments to article 23 but simply to approve the principle and refer them to the Drafting Committee.

70. Sir Humphrey WALDOCK (Expert Consultant) said that it would be wrong to interpret the International Law Commission's earlier doubts regarding the inclusion of the words "in force" as implying that it might have favoured their substitution by the expression "valid treaty". On the contrary, those doubts had arisen because the Commission was at first disinclined to admit any qualifying words of any kind in the article. He himself, however, had been insistent on the need to retain the words "in force" because they had not been made part of the definition of "treaty" in article 2; because the draft convention distinguished between "conclusion" and "entry into force"; and because it provided expressly for cases of termination and suspension of operation of treaties.

71. The United Kingdom representative had asked whether the words "in force" should be interpreted as meaning in force for the purposes of the convention. The answer was in the affirmative; that had been the Commission's intention. That was much the same as saying "in force in accordance with the provisions of the convention" but it was not the same as saying "applied" in accordance with those provisions.

72. The Jamaican representative had asked why the Commission had omitted any provisions to cover the case of a third State which might be subject to the obligations of a treaty under a later article. In his third report,⁸ submitted to the Commission in 1964, he had included a provision on that point but the Commission had preferred to keep article 23 as simple and forceful as possible. Moreover, the final form of the provisions of the convention regarding third States had seemed to make it unnecessary to cover the point expressly, since they referred in terms to the obligation of the third State.

73. The principle in the amendment by Pakistan (A/CONF.39/C.1/L.181) was one that was generally recognized in international law, but the Commission had decided that it belonged to the topic of State responsibility though it had some relevance to the law of treaties. He himself had at first been hesitant as to whether it should be left out of the present draft altogether.

74. Mr. ALCIVAR-CASTILLO (Ecuador) said that perhaps the five-State amendment could be approved in principle and then referred with the other amendments to the Drafting Committee.

75. Mr. ALVAREZ TABIO (Cuba) and Mr. MOUDILENO (Congo, Brazzaville) said they both agreed with that procedure.

76. The CHAIRMAN said he would put the Pakistan amendment to the vote.

The Pakistan amendment (A/CONF.39/C.1/L.181) was adopted by 55 votes to none, with 30 abstentions.

⁸ *Yearbook of the International Law Commission, 1964*, vol. II, p. 7, article 55.

77. The CHAIRMAN suggested that the other amendments to article 23 be referred to the Drafting Committee, it being understood that the sponsors of those amendments accepted, in principle, the existing text of the article.

*It was so agreed.*⁹

78. Mr. BADEN-SEMPER (Trinidad and Tobago) said that the amendments involved points of substance and ought to be voted on.

79. Mr. CHAO (Singapore) said that, in view of the emphasis that had been placed on the need for good faith, he would like to propose a new article to be inserted between articles 14 and 15 reading: "States, in the course of negotiations for the conclusion of a treaty shall at all times be governed by the principle of good faith."

80. Such a provision would have close links with article 23 and its precise position could be determined by the Drafting Committee.

81. The CHAIRMAN said he doubted whether the Committee could go back on a part of the draft which had already been disposed of.

82. Mr. FRANCIS (Jamaica) suggested that the representative of Singapore might bring up his amendment when the Drafting Committee submitted its report.

83. Mr. TABIBI (Afghanistan) said that the Committee should not reopen discussion on articles already approved; the representative of Singapore could submit his amendment in plenary.

84. Mr. MALITI (United Republic of Tanzania) said he saw no objection to the Committee considering the amendment by Singapore.

85. Mr. CHAO (Singapore) said he would be content to raise the matter at the second session of the Conference in 1969.

The meeting rose at 6.15 p.m.

⁹ For resumption of discussion, see 72nd meeting.

THIRTIETH MEETING

Friday, 19 April 1968, at 11 a.m.

Chairman: Mr. ELIAS (Nigeria)

Consideration of the question of the law of treaties in accordance with resolution 2166 (XXI) adopted by the General Assembly on 5 December 1966 (continued)

Article 24 (Non-retroactivity of treaties)¹

1. Mr. VEROSTA (Austria) said he agreed with the principle set out in article 24. The purpose of the amendment by Austria and Greece (A/CONF.39/C.1/L.5 and

¹ The following amendments had been submitted: Austria and Greece, A/CONF.39/C.1/L.5 and Add.1; Finland, A/CONF.39/C.1/L.91; Cuba, A/CONF.39/C.1/L.146; United States of America, A/CONF.39/C.1/L.155; Republic of Viet-Nam, A/CONF.39/C.1/L.179; Japan, A/CONF.39/C.1/L. 191.

Add.1) was to alter only the opening words of the article, because they implied that the nature or character of the treaty could justify its retroactivity. Flexibility which would enable a treaty to be regarded as retroactive in the absence of express provision conflicted with the requirements of legal security. If the parties thought that the nature or character of the treaty justified its being applied retroactively, they should include a stipulation to that effect, otherwise difficulties were bound to arise regarding the interpretation of its nature or character. Moreover, the Conference, when framing the final clauses of the convention, would have to provide for the retroactivity or non-retroactivity of its provisions. He hoped it would do so expressly.

2. Mr. CASTRÉN (Finland), introducing his delegation's amendment (A/CONF.39/C.1/L.91), said there seemed to be a contradiction between articles 24 and 15 of the draft, since article 15 stipulated that States were bound by certain obligations of good faith before the entry into force of the treaty. That was why the Finnish delegation had proposed the inclusion in article 24 of a proviso referring to article 15. It regarded its amendment as a purely drafting matter which could be referred to the Drafting Committee.

3. Mr. ALVAREZ TABIO (Cuba) said that the object of his delegation's amendment (A/CONF.39/C.1/L.146) was to bring the wording of the article into line with the intention expressed by the International Law Commission in its commentary.

4. The commentary showed that the Commission had adopted the following principles: a treaty could not apply to acts and facts begun and completed nor to situations which had arisen and ceased to exist before the entry into force of the treaty; on the other hand, acts, facts or situations that had their origin before the entry into force of the treaty, but continued to exist after it, were subject to its provisions.

5. However, article 24, as worded in Spanish, submitted acts and facts to a different system from that governing situations. The expression "*que haya tenido lugar*", as applied to acts and facts, covered them all indiscriminately, whereas the expression "*que haya dejado de existir*", if used of situations, created a distinction between those which had ceased to exist and those still in existence. Acts and facts would be governed by the principle of absolute non-retroactivity, whereas for situations, such non-retroactivity would be only relative. The amendment proposed by the Cuban delegation, which repeated the expression used in paragraph (4) of the International Law Commission's commentary would restore unity to the system of acts, facts and situations, which, as indicated in paragraph (3) of the commentary, must come within the provisions of the treaty if they continued to occur or exist after its entry into force.

6. With regard to the introductory portion of article 24, the Cuban delegation approved of the reason behind the Commission's choice, which was explained in paragraph (4) of the commentary.

7. Mr. BEVANS (United States of America) said that the essential aim of article 24 was to establish a presumption that treaties were non-retroactive. When they concluded a treaty, States did not usually wish to make it retroactive.

The exception stated at the beginning of the article sufficed to settle the rare cases in which retroactive application was intended.

8. The United States delegation, in submitting its amendment (A/CONF.39/C.1/L.155), aimed at removing the dangers to which the strength of the principle was exposed from a reference to situations which had ceased to exist at the date of entry into force of the treaty.

9. The expression "any situation which ceased to exist" was ambiguous; the ambiguity could encourage States seeking to apply the convention retroactively to claim that a previous fact, excluded by article 24 from the application of the convention, had given rise to a situation which had not ceased to exist. Although it was relatively easy to establish the date of an act or fact, it was more difficult to state with precision when a situation resulting from an act or fact had ceased to exist.

10. His delegation therefore hoped that the Drafting Committee would find it possible to delete that ambiguous expression.

11. Mr. FUJISAKI (Japan) said that the purpose of his delegation's amendment (A/CONF.39/C.1/L.191) was to eliminate the ambiguity at the beginning of article 24 by avoiding the use of the words "appears from". There might of course be cases in which the treaty had to apply retroactively despite the absence of an express provision. Such cases were adequately covered by the second part of the proposed amendment. The Japanese delegation considered that its amendment was purely a drafting matter and could be referred to the Drafting Committee.

12. Mr. SARIN CHHAK (Cambodia) said he was satisfied with the International Law Commission's wording and found it comprehensive. His only doubt was whether the Committee of the Whole and the Drafting Committee should not consider expressing the principle first and the exception afterwards, in order to give due weight to the rule of the non-retroactivity of treaties.

13. Mr. SAMRUATRUAMPHOL (Thailand) said that the principle of the non-retroactivity of treaties, unless otherwise provided or intended, was generally accepted in international law, and he therefore approved of article 24.

14. The Cuban amendment (A/CONF.39/C.1/L.146) was acceptable, as it was consistent with the explanations in the commentary to the article and with the principle that acts, facts or situations which recurred or continued to exist after the entry into force of a treaty must be subject to its provisions.

15. The Thai delegation preferred the International Law Commission's text to that proposed in the amendment by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1), since due account must be taken of cases where the nature of the treaty implied that it was to be retroactive. Difficulties might arise in determining the nature of the treaty, but they should be solved in good faith.

16. Mr. CRUCHO DE ALMEIDA (Portugal) said he too thought that article 24 was built on a distinction between acts and facts, on the one hand, and situations, on the other. With certain exceptions, acts or facts— instantaneous events or events limited *ratione temporis*—

would be subject to the rules in force at the time they occurred. Situations, namely events which continued in time, would, on the other hand, be subject to any changes in the legal situation made by a new treaty if they had not ceased to exist before it entered into force.

17. That distinction had its disadvantages and might give rise to unnecessary disputes. Situations were merely the result of acts or facts and to subject situations to the rules of the new treaty was equivalent to subjecting the acts or facts from which they derived to the innovating rules in that treaty, which was precisely what was excluded in the beginning of article 24. The article should at least provide a criterion to distinguish between situations independent of the acts or facts which had given rise to them and other situations.

18. Instead of stating only half the case, as it did, the article should remain silent on continuing situations. The Portuguese delegation therefore supported the United States amendment. For the sake of brevity, he was making no comment on the other amendments and would merely state that he was in favour of the retention of the remainder of article 24.

19. Mr. GONZALEZ CAMPOS (Spain) said he supported the text of article 24, which stated in negative terms the principle that a treaty applied only to acts, facts or situations which continued to exist after its entry into force. A presumption of non-retroactivity was thus established, unless the parties intended otherwise. It was essential not to infringe the freedom of contract. The establishment of the intention was therefore an essential element.

20. The rule respecting the application of treaties in time raised very complex questions, whether it was a matter of the preceding or subsequent character of the acts, facts or situations, or of the entry into force taken as a time limit for the application of the treaty.

21. The Spanish delegation realized those difficulties and considered that the solution found by the International Law Commission was satisfactory and that the delicate balance of the terms it had used should not be disturbed.

22. In his view, two ideas might lead to a due understanding of article 24. Firstly, although the nature of the treaty was implied in the opening words of article 24, the emphasis placed on the intention of the parties imparted a subjective character to the rule. The nature of the treaty, viewed as an objective element, usefully supplemented the subjective criterion for fixing the limits *ratione temporis* of the treaty's application. Secondly, the principle of good faith had an important place in the non-retroactivity of treaties. It was not only a matter of the part it had to play in the questions of interpretation raised by non-retroactivity but also of its place together with the intention of the parties and the nature of the treaty in the exception stated at the beginning of article 24.

23. With regard to the notion of entry into force, his delegation believed that reference was undoubtedly being made to the dual system in articles 21 and 22, namely both provisional and final entry into force.

24. Commenting on the amendments submitted, he observed that the problem raised by the application in time of treaties to situations, although difficult, could be solved by sound interpretation of the article's text. He

did not, therefore, support the deletion of the reference to situations, as requested in the United States amendment, since that would lead to an unduly rigid régime where retroactivity was concerned. He was also opposed to the amendment by Austria and Greece, since, in view of the importance of the notion of the nature of a treaty, the wording used should be sufficiently broad to embrace it. He found the substance of the Cuban delegation's amendment acceptable and he would support it, although to some extent the terms used might perhaps give the text a depreciatory tone. That point, however, might be referred to the Drafting Committee for consideration.

25. Mr. WERSHOF (Canada) said that article 24 should be worded as simply and precisely as possible. There was nothing to prevent a State, if it thought proper, from providing that a treaty should have retroactive effect. If a treaty contained no provision to that effect, it should be possible to apply a simple and precise rule. The Austrian amendment (A/CONF.39/C.1/L.5 and Add.1) was very useful, because it deleted the ambiguous phrase "Unless a different intention appears from the treaty or is otherwise established".

26. Since States could stipulate in the treaty that the non-retroactive rule did not apply, there was no reason to be concerned with their intention. The Austrian representative had suggested that his amendment should be referred to the Drafting Committee, but, in the Canadian delegation's view, it was not merely a question of drafting and the amendment should be voted on.

27. The Canadian delegation also supported the amendment in document A/CONF.39/C.1/L.155 for the reasons given by the United States representative. Although the phrase "any act or fact which took place" was very precise, the same could not be said of "or any situation which ceased to exist". Such ambiguous terms should not be kept in the article.

28. The Cuban amendment (A/CONF.39/C.1/L.146) did not seem to make the article any more precise, and the new wording was likely to give rise to quite as many difficulties as that proposed by the International Law Commission. The Canadian delegation would not be able to support that amendment.

29. Mr. JIMÉNEZ DE ARÉCHAGA (Uruguay) said he did not support the amendment by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1) as the rule laid down was too rigid. A treaty could be retroactive not only if there had been a "special clause" but also if there had been "a special object necessitating retroactive interpretation", as the International Court of Justice had said in the *Ambatielos* case.² One example was the Washington Rules in the *Alabama* case. The Japanese amendment (A/CONF.39/C.1/L.191) was preferable from that point of view.

30. The reason why the Cuban amendment (A/CONF.39/C.1/L.146) had been submitted might well be the vagueness of the Spanish text, which was not as clear as the English and French texts; it would be best to bring the Spanish text into line with the English text and to say "*un hecho que tuvo lugar*" instead of "*que haya tenido lugar*".

² *I.C.J. Reports*, 1952, p. 40.

³ *P.C.I.J.*, Series A/B, No. 74, p. 10.

31. If the phrase “ or any situation which ceased to exist ” were deleted, as proposed in the United States amendment (A/CONF.39/C.1/L.155), article 24 would be incomplete, since there were situations which could not be described as acts or facts, for example a sentence for a criminal offence that was still being served. It was curious that in almost all the cases in which the problem of the retroactive application of a treaty was involved, the Courts had described them as “ situations ”. For example, in the *Phosphates in Morocco* case, the Permanent Court of International Justice had used the term “ situation ”. It would be preferable not to amend the original text of the article, which laid down in negative form a non-controversial rule, namely that the new treaty did not apply to acts or facts which had taken place, or to situations which had ceased to exist, before its entry into force. *A contrario*, that meant that the treaty did apply to acts or facts which took place, or to situations which began to exist, after its entry into force. The cautious wording did not say explicitly, but implied, that the treaty could apply to pending situations. That was not stated positively, because, generally speaking, the authors of a treaty took into account facts and situations which existed on the date of the entry into force of the treaty. It was therefore not necessary to state a residual rule, and what mattered was the intention of the parties. The Uruguayan delegation would vote for the original text.

32. Mr. DE BRESSON (France) said he approved of article 24 in principle, but considered that the non-retroactivity rule, which was a basic principle of the law of treaties, should be stated as clearly and concisely as possible. The existing text contained two phrases which were likely to give rise to difficulties in applying the rule, namely “ intention . . . is otherwise established ” and “ any situation which ceased to exist ”. The French delegation was therefore in favour of the amendments which made the text clearer, in particular those submitted by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1) and by the United States (A/CONF.39/C.1/L.155). It was for the Drafting Committee to take those amendments into consideration and to seek a more satisfactory wording of the text submitted by the International Law Commission.

33. Mr. SINCLAIR (United Kingdom) said that a residual rule relating to the application of a treaty in time was necessary and that rule should indicate clearly that the treaty applied only to acts and facts subsequent to the treaty's entry into force. As the Canadian representative had observed, the negotiating parties, if they judged proper, were always free to make provision for the retroactivity of a treaty. The United Kingdom delegation shared the United States representative's doubts about the meaning and purpose of the phrase “ any situation which ceased to exist ”, since there was a danger that it might be interpreted as authorizing very broad exceptions to the non-retroactivity rule. Despite the Uruguayan representative's arguments, he was not convinced that the phrase should be retained. In any event, it seemed necessary to retain the introductory words to the article as proposed by the International Law Commission, as the formulation was very flexible. The United Kingdom delegation could not therefore support the amendment by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1). It also preferred the International

Law Commission's wording to that proposed by Japan (A/CONF.39/C.1/L.191).

34. Mr. MARESCA (Italy) said his delegation was convinced of the need to include a rule on non-retroactivity in the convention. The rule should be clear and brief; the original text was on the whole satisfactory. However, the words “ is otherwise established ” introduced an element of uncertainty and detracted from the clarity of the text. The Italian delegation therefore supported the amendment by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1). The International Law Commission had introduced a subtle distinction between acts and facts which had taken place, and situations which had ceased to exist, before the date of the entry into force of the treaty. If the facts and acts alone were mentioned, the non-retroactivity rule would undoubtedly have the necessary flexibility and an element of uncertainty would be removed.

35. His delegation supported the Finnish amendment (A/CONF.39/C.1/L.91), as it laid stress on the essential link between articles 15 and 24 with respect to the attitude which States should adopt even before the treaty entered into force.

36. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said he was in favour of the text submitted by the International Law Commission. Under the article nothing could prevent a State from giving retroactive effects to a particular provision of a treaty. That was a manifestation of the sovereign will of States. The article stated, furthermore, that as a general rule a treaty was not retroactive. But, under the internal legislation of States, neither did the laws have retroactive effects. Accordingly, no one could object to the basic provisions of the article. His delegation could not accept the United States amendment (A/CONF.39/C.1/L.155). The underlying idea of that amendment had already been studied by the International Law Commission, which had decided to reject it. The Cuban amendment (A/CONF.39/C.1/L.146) might be referred to the Drafting Committee.

37. Mr. KEITA (Guinea) said that on the whole his delegation approved of the draft article, although it appreciated the efforts made by those delegations that had submitted amendments. With regard to the United States amendment (A/CONF.39/C.1/L.155), there was no doubt that although acts and facts could be determined precisely, the expression “ situation which ceased to exist ” might lend itself to ambiguity. Accordingly that amendment deserved to be taken into consideration. The idea of non-retroactivity had been adopted both in private law and internal law. At the time of the entry into force of a law, situations existed which could hardly be regulated by the new law. The same applied in international law upon the conclusion of a treaty. It might be possible therefore to adopt a solution less radical than mere deletion and say, for instance “ any situation definitively established at the date of the entry into force of the treaty ”.

38. Mr. GÖR (Turkey) said he recognized that the provisions of a treaty could apply only to acts and facts which occurred when the treaty was in force. Exceptions to that rule should be limited to very specific cases. The retroactivity of a treaty should be clear from the actual text of the treaty. His delegation therefore supported the

amendment by Austria and Greece (A/CONF.39/C.1/L.5 and Add.1), for the expression "Unless a different intention appears from the treaty or is otherwise established" lent itself to confusion and was liable to give rise to disputes. His delegation could not accept the Finnish amendment (A/CONF.39/C.1/L.91), for articles 15 and 24 were not concerned with the same subject.

39. Mr. ROSENNE (Israel) said he considered that the beginning of the article should not lay down too strict a rule by stipulating that the text of the treaty should alone determine whether a particular case should constitute an exception to the general rule of non-retroactivity. The convention should be confined to giving general directives, leaving it to those responsible for drafting future treaties or for interpreting them in specific cases to include or apply whatever degree of retroactivity might be appropriate in the circumstances. For that reason, his delegation could not support the suggested amendments to the opening words of article 24. On the other hand, it would agree to the deletion of the words "or any situation which ceased to exist". The idea expressed in that phrase was probably already contained in the words "any act or fact which took place... before", so that the deletion of the phrase in question would not substantially change the meaning of the article.

40. His delegation would have no objection to a change in the presentation of the article, setting out the principle before the exception, if the Drafting Committee thought fit.

41. Mr. VEROSTA (Austria) said he did not think that the amendment proposed by his delegation and the Greek delegation (A/CONF.39/C.1/L.5 and Add.1) would make article 24 too rigid. The new wording would merely serve to draw attention to the situation which would arise from the absence in the treaty of a clause concerning retroactivity. In the absence of a precise statement on the matter a State might claim one day that the convention, by its very nature, was retroactive. His delegation therefore maintained its amendment.

42. Mr. MULIMBA (Zambia) said he regretted the absence of the Expert Consultant, as he would have liked to obtain additional explanations before giving his views on the deletion of the words "or any situation which ceased to exist".

43. Mr. YASSEEN (Iraq) said that article 24 touched upon a basic problem which the convention on the law of treaties could not ignore. The expression "or any situation which ceased to exist" was absolutely essential, as it was intended to take account of cases not covered by the words "any act or fact which took place... before."

44. The acts could have been performed before the date of entry into force, but the situation could continue after that date, and if so, the provisions of the treaty must apply even if the situation commenced before entry into force. He was opposed to the United States amendment (A/CONF.39/C.1/L.155) and was in favour of the retention of the existing wording of article 24.

45. The CHAIRMAN put the amendment submitted by Austria and Greece to the vote.

The amendment (A/CONF.39/C.1/L.5 and Add.1) was rejected by 46 votes to 24, with 18 abstentions.⁴

46. The CHAIRMAN put the United States amendment to the vote.

The United States amendment (A/CONF.39/C.1/L.155) was rejected by 47 votes to 23, with 17 abstentions.

47. The CHAIRMAN said that the amendments submitted by Finland (A/CONF.39/C.1/L.91), Cuba (A/CONF.39/C.1/L.146) and Japan (A/CONF.39/C.1/L.191), which related to matters of drafting, would be referred to the Drafting Committee.⁵

Article 25 (Application of treaties to territory)⁶

48. The CHAIRMAN announced that the delegation of the Republic of Viet-Nam had withdrawn its amendment to article 25 (A/CONF.39/C.1/L.180).

49. Mr. LUKASHUK (Ukrainian Soviet Socialist Republic) said that, indirectly, article 25 in its present form raised one of the most important problems of international law and internal law, namely the application of the norms of international law or the application of international agreements within the territories forming a State. International law could not apply directly within the territories forming a State unless a rule to that effect existed in the internal law.

50. The delegation of the Ukrainian SSR considered that the formula adopted by the International Law Commission—that "the application of a treaty extends to the entire territory of each party"—was contrary to international law and to some existing internal law systems.

51. The legal procedure for giving effect to the provisions of a treaty within a country varied from country to country. In the Ukrainian SSR, the provisions of a treaty had legal effect and were applied in the country after a law had been passed. In the United States and Austria, on the other hand, a different system was in force: the internal law gave a global authorization whereby every international treaty applied throughout the territory as soon as it was concluded.

52. Article 25 raised a complex problem. The Ukrainian amendment aimed at altering the wording without affecting the substance of the article and he requested that the amendment should be referred to the Drafting Committee.

53. Mr. HARRY (Australia) said that a rule establishing the territorial scope of a treaty might prove necessary in a number of situations. It was true that the intention of the negotiating States would normally appear from the treaty or be otherwise established before or during the negotiations or at the time consent to be bound by the treaty was expressed. But if the intention could not be established, a residuary rule was desirable.

⁴ In view of this decision, the amendment by the Republic of Viet-Nam (A/CONF.39/C.1/L.179), which was to a similar effect, was not put to the vote.

⁵ For resumption of the discussion on article 24, see 72nd meeting.

⁶ The following amendments had been submitted: Ukrainian Soviet Socialist Republic, A/CONF.39/C.1/L.164; Republic of Viet-Nam, A/CONF.39/C.1/L.180.

54. In some cases, for instance in the Antarctic Treaty,⁷ the treaty provisions related to a limited geographical area covering only a part of the territories of some of the parties to the treaty. Such cases were exceptional and would always be covered by express provisions. The problem arose rather where parts of the territories of negotiating States were regarded as distinct for the purpose of various phases of the treaty-making process, either because the parts were members of a federal union with treaty-making capacity, as in the case of the Ukrainian SSR, or, as in the case of dependent territories, specially those about to become independent, because the contracting State, according to its constitution or practice, consulted the legislative or executive authorities of those parts. The problem was of particular relevance where one of the component parts of the State, though not itself an independent sovereign State, was substantially autonomous either generally or in relation to the subject-matter of the treaty in question. In such cases a State, if it had been able to consult the competent authorities of the part of its territory concerned on the issues as they arose in the course of negotiations, might, with the agreement of the other contracting parties, confine the obligations arising from the treaty to those parts which had expressed the wish to become bound. If, on the other hand, it had been unable to carry out the necessary consultations during the negotiations, the State might wish to defer its declaration until it had ascertained the opinions of the parts of its territory concerned.

55. He wished to make it clear that the Australian delegation was not concerned in that context with the problem of ratification of treaties where the subject-matter might necessitate legislation by a member state of the Australian Federation. The need to consult a state government might sometimes influence a decision to sign certain treaties or delay their ratification but there was no problem of territorial application. It was different with the Territory of Papua, which, together with the Territory of New Guinea, enjoyed a high degree of local self-government. Its destiny was to become a self-governing country developed for independence if and when it was clearly demonstrated by the majority of the indigenous population that that was what they wished. There might be occasions when it would be necessary to consult the authorities of the Territory of Papua before ratifying or even signing a treaty.

56. He accepted the view of the International Law Commission, as expressed in paragraph (4) of its commentary, that "the words 'unless a different intention appears from the treaty or is otherwise established' ... give the necessary flexibility to the rule to cover all legitimate requirements in regard to the application of treaties to territory."

57. Article 25 was only a residual rule of interpretation, and could not in any way be construed as a norm requiring a State to express its consent to be bound by treaties without first establishing whether the treaty was acceptable and applicable to all the component parts of the State. That would continue to be a matter for internal law and practice. In conclusion, he said that he would prefer the International Law Commission's wording, but he would not oppose the Ukrainian amendment (A/CONF.39/C.1/L.164) if it was widely supported.

58. Mr. RIPHAGEN (Netherlands) said that the Netherlands Government, in its comments⁸ on article 57 of the 1964 draft, which corresponded to article 25 of the present draft, had pointed out that the wording of the article might deprive States made up of separate autonomous countries of the possibility now existing in current international practice of differentiating between those autonomous parts in so far as that might be required in consequence of their special constitutional structure. His Government had on that occasion cited various autonomous entities having exclusive competence to decide whether or not they would be bound by the provisions of a treaty concluded by the State of which they were constituent parts, either on behalf of one or more of the other constituent parts or without express specification. His Government had considered that the rule stated in that article was useful, but that it did not respect the right of autonomous countries forming a State to accept or refuse the rights or obligations arising out of a treaty which had not been adopted or authenticated at their request or on their behalf. The Netherlands Government had therefore asked for the article to be supplemented by a provision to the effect that any State consisting of separate elements and signing a treaty not containing a provision on territorial application should have the right to declare to which of its constituent parts the treaty would apply in accordance with the wishes of the autonomous parts concerned.

59. In paragraph (4) of its commentary to article 25, the International Law Commission had said that such a provision "might raise as many problems as it would solve". The Commission suggested moreover that the wording of the article as it now stood gave the necessary flexibility to the rule to cover, *inter alia*, the situation which his Government had had in mind.

60. The Netherlands delegation thought that the Commission's view was justified: the Kingdom of the Netherlands, in which three countries in two different hemispheres formed one State on the basis of complete autonomy and absolute legal equality was a case in point. Assuming that the words in the present draft "or is otherwise established" implied the liberty to continue the practice referred to, the Netherlands delegation favoured the existing wording of article 25.

61. Mr. LUKASHUK (Ukrainian Soviet Socialist Republic) said he wished to make it clear that his delegation's amendment did not aim at excluding part of a territory from the scope of a treaty; the amendment clearly stipulated that "a treaty is binding upon each party in respect of its entire territory". The basic issue was whether the norms of international law could be applied directly to a State's territories. With regard to the statement by the Australian representative, he pointed out that the Antarctic was not the territory of a State.

62. Mr. BARROS (Chile), replying to the observation of the Ukrainian representative regarding the Antarctic, said that Chile reserved its position with regard to the situation of the Chilean Antarctic.

The meeting rose at 1 p.m.

⁸ See *Yearbook of the International Law Commission, 1966*, vol. II, p. 320.

⁷ United Nations, *Treaty Series*, vol. 402, p. 71.